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TECHNICAL MEMORANDUM

Utah Coal Regulatory Program

June 5, 2013

TO: Internal File

THRU: Daron Haddock, Coal Program Manager

FROM: Joe Helfrich, Lead 

RE: Midterm Review, Castle Valley Mining LLC, Company, Bear Canyon Mine Name, Permit C015/00025, Task ID #4316

SUMMARY:

On April 2, 2013 the Division informed Mr. Cory Heaps of Castle Valley Mining LLC of the initiation of the Midterm review by the Division that contained the following:

- A. Review of the Plan to ensure that the requirements of all permit condition, division orders, notice of violations (NOV), abatement plans, and permittee-initiated Plan changes approved subsequent to permit approval or renewal (whichever is the most recent) are appropriately incorporated into the Plan document.
- B. Ensure that the Plan has been updated to reflect changes in the Utah Coal Regulatory Program which have occurred subsequent to permit approval or renewal.
- C. Review applicable portions of the permit to ensure that the Plan contains commitments for application of the best technology currently available (BTCA) to prevent additional contributions of suspended solids to stream flows outside of the permit area.
- D. Evaluate the compliance status of the permit to ensure that all unabated enforcement actions comport with current regulations for abatement; verify the status of all finalized penalties levied subsequent to permit issuance or permit renewal, and verify that there are no demonstrated patterns of violation (POV). This will include an AVS check to ensure that Ownership and Control information is current and correct.

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- E. Evaluate the reclamation bond to ensure that coverage adequately addresses permit changes approved subsequent to permit approval or renewal, and to ensure that the bond amount is appropriately escalated in current-year dollars.
- F. Evaluate the permit for compliance with variances or special permit conditions.
- G. Optional for active mines, mandatory for reclamation only sites: conduct a technical site visit in conjunction with the assigned compliance inspector to document the status and effectiveness for operational, reclamation, and contemporaneous reclamation practices undertaken on predetermined portions of the disturbed area to minimize, to the extent practicable, the contribution of acid or toxic materials to surface or groundwater, and to otherwise prevent water pollution.

This memo will include a review of items A, B, D, F and G.

- A. Review of the Plan to ensure that the requirements of all permit condition, division orders, notice of violation (NOV), abatement plans, and permittee-initiated Plan changes approved subsequent to permit approval or renewal (whichever is the most recent) are appropriately incorporated into the Plan document.

The requirements of the permit conditions contained in Special Attachment A have been met. They include:

ATTACHMENT A
Special Conditions

1. Castle Valley Mining Company LLC will submit surface and ground water quality data for the Bear Canyon Mine on a quarterly basis in an electronic format through the Electronic Data Input web site, <http://linux1.ogm.utah.gov/cgi-bin/appx-ogm.cgi>.
2. Castle Valley Mining Company LLC will comply with the terms of the Guaranty of Payment of AML Fees set forth in the document dated December 13, 2010 and signed by Joe Miller, Vice President and Secretary of Rhino Energy LLC.
3. Castle Valley Mining Company LLC will comply with the Special Forest Service Stipulations regarding compliance with the National Historic Preservation Act.

The following stipulations will apply to both NFS and private lands associated with the Bear Canyon Lease Expansion project area. The subsidence monitoring and reporting requirements for the NFS lands will also include appropriate notification to the Division.

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For private lands that involve subsidence related impacts to cultural and historic resources, the Division will be the appropriate agency for initial contact and coordination, in place of the Forest Service as outlined below for subsidence related impacts to cultural and historic resources on NFS lands:

Forest Service NHPA Stipulations

1. **Monitoring of Subsidence.** Castle Valley Mining will conduct annual subsidence monitoring of National Forest System Lands (NFS) throughout the life of the mine. Should subsidence occur, Castle Valley Mining will provide an accurate map of the entire subsidence area. Castle Valley Mining will ensure that a qualified archaeologist will then examine the location of the subsidence area relative to previous inventories and known sites within fifteen (15) working days of the identification of the subsidence. Depending on the location of subsidence in relation to previous inventories and known sites, the following stipulations will apply (to each subsidence event):
 - a. **Previously Inventoried and No Sites.** If subsidence occurs on NFS lands within an area that has undergone previous archaeological inventory, and no sites are present within the area of subsidence, or no sites eligible to the National Register of Historic Places are present in the area of subsidence, no further work will need to be done. Castle Valley Mining or their consulting archaeologist will notify the U.S. Forest Service (USFS) regarding this determination within fifteen (15) working days of making the determination. The USFS will provide the information to SHPO.
 - b. **Previously Inventoried and Known Sites.** If subsidence occurs on NFS lands within an area that has undergone previous archaeological inventory, and known archaeological sites, previously determined eligible to the National Register of Historic Places are present in the subsidence area, Castle Valley Mining will have a qualified archaeologist examine the effects of subsidence upon the site(s) in question within fifteen (15) working days of making this determination. The archaeologist will provide a report, for review by the USFS in a timely manner that makes recommendations regarding whether or not the effects of subsidence are adverse. The USFS will make a final determination of the effects of subsidence. The USFS will then consult with the SHPO regarding the effects determination. If the effect is determined to be adverse, procedures following 36CFR800.6 and the stipulations below regarding evaluation and archaeological treatment will be followed.
 - c. **Not Previously Inventoried.** If subsidence occurs on NFS lands within an area that has not undergone previous archaeological inventory, Castle Valley Mining will have a qualified archaeologist conduct a field examination of the subsidence

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area within fifteen (15) working days of making this determination (in consultation with the USFS and SHPO). Depending on the presence or absence of sites in the subsidence area, the following stipulations will apply (to each subsidence event):

- i. **No Sites.** If no sites are present within the area of subsidence, the archaeologist will make a recommendation of No Historic Properties Affected to the USFS in a timely manner. The USFS will make a final determination of the effects of subsidence. The USFS will then consult with the SHPO regarding the effects determination per 36CFR800.4(c).
 - ii. **Newly Discovered Sites.** If a site or sites are found within the area of subsidence, the archaeologist will provide a report and make recommendations of eligibility and effect to the USFS (per 36CFR800.4(c)(2) and 36CFR800.5) regarding the site(s) and subsidence effects on the site(s) in a timely manner. The USFS will make a final determination of eligibility of the site(s) and the effects of subsidence on the site(s). The USFS will then consult with the SHPO regarding the effects determination. If the effect to any site eligible to the National Register of Historic Places is determined to be adverse, procedures following 36CFR800.6 and the stipulations below regarding evaluation and archaeological treatment will be followed.
 - d. **Time Lines.** In all cases SHPO and the Tribes will be afforded thirty (30) calendar days following receipt of reports/consultation requests to respond.
 - e. **Conducting Consultation.** The USFS will consult with tribes, SHPO, and the Utah Division of Oil, Gas and Mining (UDOGM) during this process at a level appropriate to the nature of the resources (if any) and effects to the resources (if any) taking into account comments and concerns received previously from the tribes and consulting parties.
2. **Discoveries in Area of Potential Effect (APE).** Should unanticipated cultural or historic resources be observed within the APE during, but not limited to, Castle Valley Mining's quarterly ground-water monitoring, annual subsidence monitoring, OGM's field visits, construction of any mine-related structures or features, future archeological surveys conducted within the permit area, or otherwise brought to USFS attention, Castle Valley Mining will halt any work within the vicinity of the discovery that could harm the discovery and notify the USFS within 24 hours of the discovery. Castle Valley Mining will also protect the site. The USFS will notify SHPO of said resources within seven (7) days of resource discovery. If determined appropriate, the USFS will require Castle Valley Mining to record the discovery, conduct additional evaluations as necessary, and

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provide correlating reports. The USFS will make determinations of eligibility and effect regarding the discovery.

- a. **No Historic Properties Affected or No Adverse Effects.** If a determination of No Historic Properties Affected or No Adverse Effects is made, the USFS will consult with the SHPO regarding the determination following 36CFR800.4-5.
- b. **Adverse or Potentially Adverse.** If effects to a site that is determined via this process to be eligible to the National Register of Historic Places are determined adverse or potentially adverse, the USFS, Castle Valley Mining and SHPO will reconvene to recommend and draft appropriate measures to avoid, minimize, or mitigate adverse effects.
- c. **Time Lines.** In all cases SHPO and the Tribes will be afforded thirty (30) calendar days following receipt of reports/consultation requests to respond.
- d. **Conducting Consultation.** The USFS will consult with tribes, SHPO, and UDOGM during this process at a level appropriate to the nature of the resources (if any) and effects to the resources (if any) taking into account comments and concerns received previously from the tribes and consulting parties.

Funding of Work. Castle Valley Mining will fund and implement any future and all cultural or historic resources fieldwork, analysis, and monitoring, required under these stipulations.

Castle Valley Mining has met the following commitments as noted in the 2012 Annual report.

Title: SUBSIDENCE MONITORING

Objective: Determine subsidence effects from mining

Frequency: Annually

Status: On going

Reports: Submit surveyed monitoring data to the Division annually. Please include a map showing the

location of the subsidence points in relationship to the underground workings.

Citation: MRP Chapter 5, Appendix 5C, pg 5c-8

Title: WILDLIFE AWARENESS PROGRAM

Objective: To inform employees of the wildlife and the need for protection in the mine facilities and access

road areas.

Frequency: As needed.

Status: Ongoing.

Reports: Summary in Annual Report

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Citation: Chapter three, page 3-45, paragraph 2.

Title: IDENTIFICATION OF NEW CULTURAL RESOURCES.

Objective: If during the course of mining operations, previously unidentified cultural resources are discovered,

Permittee shall ensure that the site(s) is not disturbed and shall notify the Division of Oil, Gas, and Mining. The

Division, after coordination with OSM, shall inform the Permittee of necessary actions required.

Frequency: The Permittee shall implement the mitigation measures required by the Division within the time

specified by the Division.

Status: Ongoing.

Reports: Annual

Citation: MRP, Chapter 4, Section 411.144, page 4-15

Title: RAPTOR SURVEYS

Objective: Verify presence of nesting birds, and status of nests. Raptor surveys will be conducted every year

during the mine life. Include follow-up surveys if conducted.

Frequency: annually for the life of the mine.

Status: Ongoing

Reports: Annual

Citation: Chapter three, page 3-70, paragraph 2.

There are no division orders, notice of violation (NOV), abatement plans, and permittee-initiated Plan changes approved subsequent to permit approval have been incorporated into the Plan document.

B. The Plan has been updated to reflect changes in the Utah Coal Regulatory Program which have occurred subsequent to permit approval or renewal.

C. There have been no outstanding enforcement actions or civil penalties and subsequently no demonstrated patterns of violation (POV) subsequent to permit issuance. This will include an AVS check to ensure that Ownership and Control information is current and correct.

F. The permit has been evaluated for compliance with variances or special permit conditions as noted in item A.

G. A technical site visit in conjunction with the assigned compliance inspector was conducted on May 30th, 2013 to document the status and effectiveness for operational, reclamation, and contemporaneous reclamation practices undertaken on predetermined

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portions of the disturbed area to minimize, to the extent practicable, the contribution of acid or toxic materials to surface or groundwater, and to otherwise prevent water pollution.

The sediment ponds have been cleaned out. The material has been placed on the coal stockpile pad and blended with the stockpiled coal where it is loaded on to the coal hauling trucks. Other sediment control structures, (catch basins, culverts, berms and ditches), were adequately handling run-off from the disturbed areas.

Vegetation monitoring of the reclaimed tank seam area has been done in accordance with the schedule outlined in chapter three of the approved MRP.